

25 MAR 2005



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In re Application of
DAY, Ian James et al.
Application No.: 09/936,960
PCT No.: PCT/GB00/00950
Int. Filing Date: 20 March 2000
Priority Date: 18 March 1999
Attorney Docket No.: BAC-116-A
For: ENCLOSURE FOR HARDWARE

DECISION ON

PETITION

UNDER 37 CFR 1.181

This decision is in response to "Petition For Revival of an Application For Patent Abandoned Unavoidably Under 37 CFR 1.137(a)," filed on 10 March 2005, which has been treated as a petition under 37 CFR 1.181 for the reasons set forth below.

BACKGROUND

On 20 March 2000, applicants filed international application PCT/GB00/00950. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 21 September 2000. A demand for international preliminary examination was filed on 16 October 2000. The deadline for entry into the national stage in the United States was 18 September 2001.

On 18 September 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 08 November 2001, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 20 October 2004, the Office mailed Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application went abandoned for failure to timely reply to the Notification of Missing Requirements.

On 10 March 2005, applicants filed the instant petition.

DISCUSSION

A review of the petition reveals that applicant alleges that the mailed correspondence was never received. Applicant is acting on a copy of the Notification of Missing Requirements sent to applicant, by facsimile. The petition is being treated as a nonreceipt of the office action.

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Item (1) has not been satisfied. Practitioner states that the Notice to File Missing Parts was not received, but applicant must state that the Notification of Missing Requirements was not received. Applicants were sent a Notification of Missing Requirements, not a Notice to File Missing Parts.

As to (2), practitioner does not state that a search of the file jacket and docket records indicates that the Office action was not received.

As to (3), practitioner must provide a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed and reference the docket record in the practitioner's statement. "For example, if a three month period for reply was set in the nonreceived Office Action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action." MPEP §711.03(c) para. II. Neither a correspondence log nor the docket records for this application alone are sufficient.


CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is DISMISSED without prejudice.

The application remains ABANDONED.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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